



Senate

General Assembly

File No. 681

January Session, 2013

Substitute Senate Bill No. 1062

Senate, May 2, 2013

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE RECOMMENDATIONS OF THE
CONNECTICUT SENTENCING COMMISSION REGARDING THE
SENTENCING OF A CHILD CONVICTED OF A FELONY OFFENSE.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (*Effective October 1, 2013*) (a) If the case of a child,
2 as defined in section 46b-120 of the general statutes, charged with the
3 commission of a felony is transferred to the regular criminal docket of
4 the Superior Court pursuant to section 46b-127 of the general statutes,
5 as amended by this act, and the child is convicted pursuant to such
6 transfer, the court shall consider mitigating factors at the time of
7 sentencing, including, but not limited to, the following:
- 8 (1) The age and maturity of the child at the time of the offense;
- 9 (2) The child's history of trauma, abuse or neglect;
- 10 (3) The child's history of mental illness or substance abuse;
- 11 (4) The intellectual capacity and educational history of the child;

12 (5) The child's family and community environment, including the
13 child's ability to extricate himself or herself from such environment;

14 (6) The child's level of participation in the offense;

15 (7) The degree of peer or familial influence or pressure on the child;

16 (8) The impetuosity of the child;

17 (9) The ability of the child to appreciate the risks and consequences
18 of the child's conduct;

19 (10) The ability of the child to navigate the criminal justice system
20 and participate meaningfully in his or her defense;

21 (11) The capacity for rehabilitation of such child and the
22 opportunities for rehabilitation of such child in the community and in
23 an adult prison environment; and

24 (12) Any scientific and psychological evidence showing the
25 differences between a child's brain development and an adult's brain
26 development.

27 (b) Notwithstanding the provisions of section 54-91a of the general
28 statutes, no presentence investigation or report may be waived with
29 respect to a child convicted of a class A or B felony. With respect to a
30 child convicted of a class C or D felony or an unclassified felony, the
31 presentence investigation and report may be waived by the child only
32 upon approval by the court. Any presentence report prepared with
33 respect to a child shall address the factors set forth in subdivisions (1)
34 to (12), inclusive, of subsection (a) of this section.

35 (c) The Court Support Services Division of the Judicial Branch shall
36 establish reference materials relating to adolescent psychological and
37 brain development to assist courts in sentencing children pursuant to
38 this section.

39 Sec. 2. Subsection (c) of section 46b-127 of the general statutes is
40 repealed and the following is substituted in lieu thereof (*Effective*

41 *October 1, 2013*):

42 (c) Upon the effectuation of the transfer, such child shall stand trial
43 and be sentenced, if convicted, as if such child were eighteen years of
44 age, subject to the requirements of section 1 of this act. Such child shall
45 receive credit against any sentence imposed for time served in a
46 juvenile facility prior to the effectuation of the transfer. A child who
47 has been transferred may enter a guilty plea to a lesser offense if the
48 court finds that such plea is made knowingly and voluntarily. Any
49 child transferred to the regular criminal docket who pleads guilty to a
50 lesser offense shall not resume such child's status as a juvenile
51 regarding such offense. If the action is dismissed or nolleed or if such
52 child is found not guilty of the charge for which such child was
53 transferred or of any lesser included offenses, the child shall resume
54 such child's status as a juvenile until such child attains the age of
55 eighteen years.

56 Sec. 3. Subsection (f) of section 46b-133c of the general statutes is
57 repealed and the following is substituted in lieu thereof (*Effective*
58 *October 1, 2013*):

59 (f) Whenever a proceeding has been designated a serious juvenile
60 repeat offender prosecution pursuant to subsection (b) of this section
61 and the child does not waive such child's right to a trial by jury, the
62 court shall transfer the case from the docket for juvenile matters to the
63 regular criminal docket of the Superior Court. Upon transfer, such
64 child shall stand trial and be sentenced, if convicted, as if such child
65 were eighteen years of age, subject to the requirements of section 1 of
66 this act, except that no such child shall be placed in a correctional
67 facility but shall be maintained in a facility for children and youths
68 until such child attains eighteen years of age or until such child is
69 sentenced, whichever occurs first. Such child shall receive credit
70 against any sentence imposed for time served in a juvenile facility
71 prior to the effectuation of the transfer. A child who has been
72 transferred may enter a guilty plea to a lesser offense if the court finds
73 that such plea is made knowingly and voluntarily. Any child

74 transferred to the regular criminal docket who pleads guilty to a lesser
75 offense shall not resume such child's status as a juvenile regarding
76 such offense. If the action is dismissed or nolloed or if such child is
77 found not guilty of the charge for which such child was transferred,
78 the child shall resume such child's status as a juvenile until such child
79 attains eighteen years of age.

80 Sec. 4. Subsection (f) of section 46b-133d of the general statutes is
81 repealed and the following is substituted in lieu thereof (*Effective*
82 *October 1, 2013*):

83 (f) When a proceeding has been designated a serious sexual
84 offender prosecution pursuant to subsection (c) of this section and the
85 child does not waive the right to a trial by jury, the court shall transfer
86 the case from the docket for juvenile matters to the regular criminal
87 docket of the Superior Court. Upon transfer, such child shall stand trial
88 and be sentenced, if convicted, as if such child were eighteen years of
89 age, subject to the requirements of section 1 of this act, except that no
90 such child shall be placed in a correctional facility but shall be
91 maintained in a facility for children and youths until such child attains
92 eighteen years of age or until such child is sentenced, whichever occurs
93 first. Such child shall receive credit against any sentence imposed for
94 time served in a juvenile facility prior to the effectuation of the
95 transfer. A child who has been transferred may enter a guilty plea to a
96 lesser offense if the court finds that such plea is made knowingly and
97 voluntarily. Any child transferred to the regular criminal docket who
98 pleads guilty to a lesser offense shall not resume such child's status as
99 a juvenile regarding such offense. If the action is dismissed or nolloed or
100 if such child is found not guilty of the charge for which such child was
101 transferred, the child shall resume such child's status as a juvenile until
102 such child attains eighteen years of age.

103 Sec. 5. Section 53a-46a of the general statutes is repealed and the
104 following is substituted in lieu thereof (*Effective October 1, 2013, and*
105 *applicable to any person convicted prior to, on or after said date*):

106 (a) A person shall be subjected to the penalty of death for a capital

107 felony committed prior to April 25, 2012, under the provisions of
108 section 53a-54b, as amended by this act, in effect prior to April 25,
109 2012, only if (1) a hearing is held in accordance with the provisions of
110 this section, and (2) such person was eighteen years of age or older at
111 the time the offense was committed.

112 (b) For the purpose of determining the sentence to be imposed when
113 a defendant is convicted of or pleads guilty to a capital felony, the
114 judge or judges who presided at the trial or before whom the guilty
115 plea was entered shall conduct a separate hearing to determine the
116 existence of any mitigating factor concerning the defendant's character,
117 background and history, or the nature and circumstances of the crime,
118 and any aggravating factor set forth in subsection (i) of this section.
119 Such hearing shall not be held if the state stipulates that none of the
120 aggravating factors set forth in subsection (i) of this section exists or
121 that any factor set forth in subsection (h) of this section exists. Such
122 hearing shall be conducted (1) before the jury which determined the
123 defendant's guilt, or (2) before a jury impaneled for the purpose of
124 such hearing if (A) the defendant was convicted upon a plea of guilty;
125 (B) the defendant was convicted after a trial before three judges as
126 provided in subsection (b) of section 53a-45; or (C) if the jury which
127 determined the defendant's guilt has been discharged by the court for
128 good cause, or (3) before the court, on motion of the defendant and
129 with the approval of the court and the consent of the state.

130 (c) In such hearing the court shall disclose to the defendant or his
131 counsel all material contained in any presentence report which may
132 have been prepared. No presentence information withheld from the
133 defendant shall be considered in determining the existence of any
134 mitigating or aggravating factor. Any information relevant to any
135 mitigating factor may be presented by either the state or the defendant,
136 regardless of its admissibility under the rules governing admission of
137 evidence in trials of criminal matters, but the admissibility of
138 information relevant to any of the aggravating factors set forth in
139 subsection (i) of this section shall be governed by the rules governing
140 the admission of evidence in such trials. The state and the defendant

141 shall be permitted to rebut any information received at the hearing and
142 shall be given fair opportunity to present argument as to the adequacy
143 of the information to establish the existence of any mitigating or
144 aggravating factor. The burden of establishing any of the aggravating
145 factors set forth in subsection (i) of this section shall be on the state.
146 The burden of establishing any mitigating factor shall be on the
147 defendant.

148 (d) In determining whether a mitigating factor exists concerning the
149 defendant's character, background or history, or the nature and
150 circumstances of the crime, pursuant to subsection (b) of this section,
151 the jury or, if there is no jury, the court shall first determine whether a
152 particular factor concerning the defendant's character, background or
153 history, or the nature and circumstances of the crime, has been
154 established by the evidence, and shall determine further whether that
155 factor is mitigating in nature, considering all the facts and
156 circumstances of the case. Mitigating factors are such as do not
157 constitute a defense or excuse for the capital felony of which the
158 defendant has been convicted, but which, in fairness and mercy, may
159 be considered as tending either to extenuate or reduce the degree of his
160 culpability or blame for the offense or to otherwise constitute a basis
161 for a sentence less than death.

162 (e) The jury or, if there is no jury, the court shall return a special
163 verdict setting forth its findings as to the existence of any factor set
164 forth in subsection (h) of this section, the existence of any aggravating
165 factor or factors set forth in subsection (i) of this section and whether
166 any aggravating factor or factors outweigh any mitigating factor or
167 factors found to exist pursuant to subsection (d) of this section.

168 (f) If the jury or, if there is no jury, the court finds that (1) none of
169 the factors set forth in subsection (h) of this section exist, (2) one or
170 more of the aggravating factors set forth in subsection (i) of this section
171 exist and (3) (A) no mitigating factor exists or (B) one or more
172 mitigating factors exist but are outweighed by one or more
173 aggravating factors set forth in subsection (i) of this section, the court

174 shall sentence the defendant to death.

175 (g) If the jury or, if there is no jury, the court finds that (1) any of the
176 factors set forth in subsection (h) of this section exist, or (2) none of the
177 aggravating factors set forth in subsection (i) of this section exists, or
178 (3) one or more of the aggravating factors set forth in subsection (i) of
179 this section exist and one or more mitigating factors exist, but the one
180 or more aggravating factors set forth in subsection (i) of this section do
181 not outweigh the one or more mitigating factors, the court shall impose
182 a sentence of life imprisonment without the possibility of release.

183 (h) The court shall not impose the sentence of death on the
184 defendant if the jury or, if there is no jury, the court finds by a special
185 verdict, as provided in subsection (e) of this section, that at the time of
186 the offense (1) the defendant was [under the age of eighteen years, or
187 (2) the defendant was] a person with intellectual disability, as defined
188 in section 1-1g, or [(3)] (2) the defendant's mental capacity was
189 significantly impaired or the defendant's ability to conform the
190 defendant's conduct to the requirements of law was significantly
191 impaired but not so impaired in either case as to constitute a defense to
192 prosecution, or [(4)] (3) the defendant was criminally liable under
193 sections 53a-8, 53a-9 and 53a-10 for the offense, which was committed
194 by another, but the defendant's participation in such offense was
195 relatively minor, although not so minor as to constitute a defense to
196 prosecution, or [(5)] (4) the defendant could not reasonably have
197 foreseen that the defendant's conduct in the course of commission of
198 the offense of which the defendant was convicted would cause, or
199 would create a grave risk of causing, death to another person.

200 (i) The aggravating factors to be considered shall be limited to the
201 following: (1) The defendant committed the offense during the
202 commission or attempted commission of, or during the immediate
203 flight from the commission or attempted commission of, a felony and
204 the defendant had previously been convicted of the same felony; or (2)
205 the defendant committed the offense after having been convicted of
206 two or more state offenses or two or more federal offenses or of one or

207 more state offenses and one or more federal offenses for each of which
208 a penalty of more than one year imprisonment may be imposed, which
209 offenses were committed on different occasions and which involved
210 the infliction of serious bodily injury upon another person; or (3) the
211 defendant committed the offense and in such commission knowingly
212 created a grave risk of death to another person in addition to the
213 victim of the offense; or (4) the defendant committed the offense in an
214 especially heinous, cruel or depraved manner; or (5) the defendant
215 procured the commission of the offense by payment, or promise of
216 payment, of anything of pecuniary value; or (6) the defendant
217 committed the offense as consideration for the receipt, or in
218 expectation of the receipt, of anything of pecuniary value; or (7) the
219 defendant committed the offense with an assault weapon, as defined
220 in section 53-202a; or (8) the defendant committed the offense set forth
221 in subdivision (1) of section 53a-54b, as amended by this act, to avoid
222 arrest for a criminal act or prevent detection of a criminal act or to
223 hamper or prevent the victim from carrying out any act within the
224 scope of the victim's official duties or to retaliate against the victim for
225 the performance of the victim's official duties.

226 Sec. 6. Section 53a-54b of the general statutes is repealed and the
227 following is substituted in lieu thereof (*Effective October 1, 2013, and*
228 *applicable to any person convicted prior to, on or after said date*):

229 A person is guilty of murder with special circumstances who is
230 convicted of any of the following and was eighteen years of age or
231 older when such person committed the murder: (1) Murder of a
232 member of the Division of State Police within the Department of
233 Emergency Services and Public Protection or of any local police
234 department, a chief inspector or inspector in the Division of Criminal
235 Justice, a state marshal who is exercising authority granted under any
236 provision of the general statutes, a judicial marshal in performance of
237 the duties of a judicial marshal, a constable who performs criminal law
238 enforcement duties, a special policeman appointed under section 29-
239 18, a conservation officer or special conservation officer appointed by
240 the Commissioner of Energy and Environmental Protection under the

241 provisions of section 26-5, an employee of the Department of
242 Correction or a person providing services on behalf of said department
243 when such employee or person is acting within the scope of such
244 employee's or person's employment or duties in a correctional
245 institution or facility and the actor is confined in such institution or
246 facility, or any firefighter, while such victim was acting within the
247 scope of such victim's duties; (2) murder committed by a defendant
248 who is hired to commit the same for pecuniary gain or murder
249 committed by one who is hired by the defendant to commit the same
250 for pecuniary gain; (3) murder committed by one who has previously
251 been convicted of intentional murder or of murder committed in the
252 course of commission of a felony; (4) murder committed by one who
253 was, at the time of commission of the murder, under sentence of life
254 imprisonment; (5) murder by a kidnapper of a kidnapped person
255 during the course of the kidnapping or before such person is able to
256 return or be returned to safety; (6) murder committed in the course of
257 the commission of sexual assault in the first degree; (7) murder of two
258 or more persons at the same time or in the course of a single
259 transaction; or (8) murder of a person under sixteen years of age.

260 Sec. 7. Section 53a-54d of the general statutes is repealed and the
261 following is substituted in lieu thereof (*Effective October 1, 2013, and*
262 *applicable to any person convicted prior to, on or after said date*):

263 A person is guilty of murder when, acting either alone or with one
264 or more persons, he commits arson and, in the course of such arson,
265 causes the death of a person. Notwithstanding any other provision of
266 the general statutes, any person convicted of murder under this section
267 who was eighteen years of age or older at the time of the offense shall
268 be punished by life imprisonment and shall not be eligible for parole.

269 Sec. 8. Subsection (c) of section 53a-54a of the general statutes is
270 repealed and the following is substituted in lieu thereof (*Effective*
271 *October 1, 2013, and applicable to any person convicted prior to, on or after*
272 *said date*):

273 (c) Murder is punishable as a class A felony in accordance with

274 subdivision (2) of section 53a-35a unless it is (1) a capital felony
 275 committed prior to April 25, 2012, by a person who was eighteen years
 276 of age or older at the time of the offense, punishable in accordance
 277 with subparagraph (A) of subdivision (1) of section 53a-35a, (2) murder
 278 with special circumstances committed on or after April 25, 2012, by a
 279 person who was eighteen years of age or older at the time of the
 280 offense, punishable as a class A felony in accordance with
 281 subparagraph (B) of subdivision (1) of section 53a-35a, or (3) murder
 282 under section 53a-54d, as amended by this act, committed by a person
 283 who was eighteen years of age or older at the time of the offense.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2013</i>	New section
Sec. 2	<i>October 1, 2013</i>	46b-127(c)
Sec. 3	<i>October 1, 2013</i>	46b-133c(f)
Sec. 4	<i>October 1, 2013</i>	46b-133d(f)
Sec. 5	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-46a
Sec. 6	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-54b
Sec. 7	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-54d
Sec. 8	<i>October 1, 2013, and applicable to any person convicted prior to, on or after said date</i>	53a-54a(c)

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 14 \$	FY 15 \$
Correction, Dept.	GF - Potential Savings	See Below	See Below

Municipal Impact: None

Explanation

The bill makes various changes that do not result in a fiscal impact including requiring the court to consider certain factors when sentencing a juvenile and requiring the Judicial Department Court Support Services Division (CSSD) to create reference materials on adolescent psychology and brain development to assist courts at sentencing. It is anticipated that CSSD can do so with current resources and does not result in a fiscal impact.

Retroactively eliminating life sentences for juveniles for specific offenses are anticipated to result in a minimal savings to the Department of Correction. There are approximately 20 juveniles currently sentenced to life imprisonment, and to the extent that newly eligible inmates are released the agency will realize savings. In addition, to the extent that future sentences are shorter than under current statute, the agency will realize additional minimal savings in the future.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

Sources: Department of Correction Current Inmate Database

OLR Bill Analysis**sSB 1062*****AN ACT CONCERNING THE RECOMMENDATIONS OF THE CONNECTICUT SENTENCING COMMISSION REGARDING THE SENTENCING OF A CHILD CONVICTED OF A FELONY OFFENSE.*****SUMMARY:**

This bill makes a number of changes related to sentencing offenders who were younger than age 18 at the time of committing their crimes, including:

1. retroactively eliminating life sentences for capital felony, murder with special circumstances, and arson murder for offenders who committed these crimes when they were younger than age 18;
2. requiring a criminal court to consider certain factors when sentencing someone who was charged with a felony committed when he or she was between ages 14 and 18;
3. requiring the Judicial Branch's Court Support Services Division to create reference materials on adolescent psychology and brain development to assist courts at sentencing; and
4. (a) requiring a presentence investigation or report for a child to consider the same sentencing factors, (b) prohibiting waiving such an investigation or report for a child convicted of a class A or B felony, and (c) requiring the court to approve a waiver of such an investigation or report for a child charged with any other felony.

EFFECTIVE DATE: October 1, 2013, and the provisions regarding capital felony, murder with special circumstances, and arson murder apply regardless of when an offender is convicted.

SENTENCES TO LIFE IMPRISONMENT

The bill prohibits sentencing someone for a capital felony if he or she was younger than age 18 when the crime was committed and overturns prior sentences of this type. By law, capital felony punishes crimes committed before April 25, 2012 with life imprisonment without possibility of release or death. Current law prohibits sentencing offenders who were younger than age 18 at the time of the crime to death.

The bill prohibits convicting someone of murder with special circumstances unless the offender was at least age 18 at the time of the offense. It overturns any prior convictions of this crime for these offenders. By law, this crime is punishable by life imprisonment without the possibility of release.

The bill lowers the penalty for arson murder when the offender is younger than age 18 from life imprisonment, statutorily defined as 60 years without parole, to 25 to 60 years without parole. It applies this change retroactively to decrease the prison sentence of any offender previously convicted of committing this crime when younger than age 18.

The bill makes conforming changes.

MITIGATING FACTORS AT SENTENCING

The bill requires a criminal court to consider mitigating factors when sentencing someone charged with, but not necessarily convicted of, a felony if he or she was between ages 14 and 18 when the crime was committed. These factors must include the child's:

1. age and maturity at the time of the offense;
2. history of trauma, abuse, neglect, mental illness, or substance abuse;
3. intellectual capacity and educational history;
4. family and community environment, including ability to

- extricate himself or herself from the environment;
5. level of participation in the offense;
 6. subjection to peer or familial influence or pressure;
 7. impetuosity;
 8. ability to appreciate the risks and consequences of his or her conduct;
 9. ability to navigate the criminal justice system and participate meaningfully in his or her defense; and
 10. capacity for rehabilitation and opportunities for rehabilitation in the community and an adult prison environment.

Under the bill, mitigating factors also include scientific and psychological evidence showing the difference between a child's and adult's brain development.

BACKGROUND

Cases in Juvenile Court and Superior Court

By law, juvenile courts have jurisdiction to hear criminal cases of offenders who are younger than age 18. Depending on the circumstances, offenders alleged to have committed felonies when they were between ages 14 and 18 may have their cases transferred to the Superior Court criminal docket.

Capital Felony and Murder with Special Circumstances

A person commits a capital felony, before April 25, 2012, or murder with special circumstances, after that date, if he or she murders:

1. certain officers while performing their duties, such as a police officer, state marshal, special conservation officer, or Department of Correction employee;
2. for pay or hires someone to murder;

3. after a previous conviction for intentional murder or murder while a felony was committed;
4. while sentenced to life imprisonment;
5. someone that he or she kidnapped;
6. while committing 1st degree sexual assault;
7. two or more people at the same time or in the course of a single transaction; or
8. a person younger than age 16.

Presentence Investigation Report

The law requires a presentence investigation for anyone convicted of a felony for the first time in Connecticut. The court may request it for any crime or offense other than a capital felony or murder with special circumstances. Probation officers prepare the report, which includes information on the circumstances of the offense; the victim's attitude; and the defendant's criminal record, social history, and present condition

Related Cases—U.S. Supreme Court

In *Graham v. Florida*, the U.S. Supreme Court ruled that the Eighth Amendment's prohibition against cruel and unusual punishment prohibits states from imposing sentences to life without parole for defendants younger than age 18 for non-homicide crimes. The Court stated that there must be "some meaningful opportunity" for release based on a defendant's demonstrated maturity and rehabilitation. The Court stated that the Eighth Amendment does not prohibit a juvenile who commits a non-homicide crime from being kept in prison for life but it does prohibit making the judgment "at the outset that those offenders never will be fit to re-enter society" (130 S.Ct. 2011 (2010)).

In *Miller v. Alabama*, the U.S. Supreme Court held that the 8th Amendment prohibits courts from automatically imposing life without parole sentences on offenders who committed homicides while they

were juveniles (younger than age 18). The Court did not categorically bar life without parole sentences for juveniles but stated that court must “take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison” (132 S.Ct. 2455 (2012)).

Related Bill

sHB 6581, reported favorably by the Judiciary Committee, establishes alternative parole eligibility rules for someone who (1) committed a crime when he or she was younger than age 18 and (2) was sentenced to more than 10 years in prison.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 27 Nay 17 (04/16/2013)